

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

WA.No. 1996 of 2003(E)

APPELLANT: PETITIONER:

BASHEER A.,
THACHAYIL THEKKETHIL, IDAKKULANGARA P.O.,
KARUNAGAPPALLY.

BY ADV. SRI.B.SURESH KUMAR

RESPONDENTS: RESPONDENTS:

1. THE KERALA KERA KARSHAKA SAHAKARANA
FEDERATION LTD. (KERAFED), THIRUVANANTHAPURAM,
REPRESENTED BY ITS MANAGING DIRECTOR.
 2. THE PLANT MANAGER,
KERAFED OIL COMPLEX, KARUNAGAPPALLY, KOLLAM.
 3. THE DISTRICT LABOUR OFFICER, KOLLAM.
 4. THE REGIONAL JOINT LABOUR COMMISSIONER,
KOLLAM.
 5. THE PRESIDENT,
H.M.S. UNION, KERAFED UNIT, K.S. PURAM P.O.,
PUTHIYAKAVU, KARUNAGAPPALLY, KOLLAM. (DELETED)
- (THE NAME OF R5 IS DELETED FROM THE PARTY ARRAY AT THE
RISK OF THE APPELLANT VIDE ORDER DATED 30-3-2006 IN I.A.NO.
482/2006)

BY SPL. GOVERNMENT PLEADER SRI.C.T.RAVIKUMAR-R3, R4.
ADV.SMT.PRIYA-R1, R2.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 20/09/2007, ALONG WITH
WA.NO.1997 OF 2003, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A.Nos.1996 & 1997 of 2003

Dated, this the 20th day of September, 2007

JUDGMENT

K.T.Sankaran, J.

These appeals arise out of respectively against O.P.Nos.13860 of 1997 and 9835 of 1998.

2. Basheer, the petitioner in O.P.No.13860 of 1997, who claimed that he was engaged as headload worker by the first respondent Company, namely the Kerafed Oil Complex, a fully owned Government company, raised a dispute that he was denied employment by the Company. According to him he was denied employment since August 1995. The District Labour Officer, Kollam before whom the representation was made by Basheer, sent the matter to the Assistant Labour Officer for conciliation and settlement. Conciliation did not succeed. The Assistant Labour Officer submitted a report under Section 21 (1) of the Kerala Headload Workers Act, 1978 ('the Act' for short). Thereafter conciliation proceedings were initiated by the Deputy Labour Officer under Section 21(2) of the Act. The matter was not settled. Instead of passing an order under sub-section (4) of Section 21 of the Act deciding the matter one way or the other, it would appear that he sent a report to the District Labour Officer. The District Labour Officer passed Ext.P1 order dated 13.5.1997 directing the Company to reinstate Basheer. The Company was also directed to pay the backwages and other benefits to the employee. The further direction in Ext.P1 is that Basheer should be provided with 1/100th of the loading and unloading work by the Company.

3. Challenging Ext.P1 order the Company filed appeal before the Regional Joint Labour Commissioner who dismissed the appeal as per order dated 12.2.1998 (Ext.P3 in O.P.No.9835 of 1998). Challenging that order the Company filed O.P.No. 9835 of 1998. To implement Ext.P1 order passed by the District Labour Officer, Basheer filed O.P.No.13860 of 1997.

4. Both the writ petitions were considered and disposed of by a common judgment by the learned Single Judge. The learned Single Judge took note of the facts and circumstances of the case and the submissions made by the learned counsel appearing for the parties and thought it fit to remand the matter to the District Labour Officer to consider the matter afresh on the question whether Basheer would be entitled to any benefits other than re-employment. The learned Single Judge took note of the fact that Basheer was a member of the union and he was ousted from the union. It was also taken note of that all the unions engaged in the work of the company merged together and a single union was formed. The entire headload work in the company was being done by the members of this union. Basheer is not a member of the union and that circumstance was also taken note of by the learned Single Judge. In these circumstances, the learned Single Judge held that it was not proper to direct re-employment of Basheer in the company.

5. Heard learned counsel appearing for the worker and the company. After having heard the matter in great detail, we are of the view that the learned Single Judge was right in remanding the matter to the District Labour Officer to consider the only question whether Basheer is entitled to any benefits other than re-employment. This is in consonance with the Scheme of the Act. We are also of the view that the peculiar facts and circumstances obtaining in the

company and the merger of the various unions and ousting of Basheer from the union were all relevant in holding that it would not be proper to pass an order for re-employment of the worker in the company. The Act also does not provide for reinstatement of a worker who was denied employment. On the other hand, Section 36 of the Act would indicate that an employee who was denied employment would at best be entitled to monetary benefits. As per Ext.P1 order, the company was directed to provide to the employee 1/100th of the headload work in the Company. Such a direction requires continuous supervision. The Act does not contemplate such supervision by any authority. The manner in which such a direction should be implemented is also not provided in the Act. The learned Single Judge was therefore fully justified, in our view, in directing the Labour Officer to consider the question whether the employee is entitled to any benefits other than re-employment. No grounds are made out for interference with the order passed by the learned Single Judge.

The writ appeals are accordingly dismissed. There will be no order as to costs.

(H.L.DATTU)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns